

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Modern Rules of Procedure for the Issuance
Of Advisory Opinions in the Nature of Service
Proceedings

Docket No. RM2012-4

**COMMENTS OF NATIONAL NEWSPAPER ASSOCIATION, INC.
(July 29, 2013)**

Pursuant Commission Order No. 1738, National Newspaper Association (NNA) hereby provides comments on the Commission's proposal to amend its rules in 39 CFR Part 3001, subpart D, governing the procedure for reviewing proposed changes to the Postal Service's Nature of Service.

National Newspaper Association represents 2,200 members across the United States. Its members predominantly are community newspapers serving small towns and rural areas. NNA has appeared in numerous proceedings involving universal mail service and standards for delivery in rural America.

National Newspaper Association previously commented on the Commission's consideration of amended proceedings in "N" cases, particularly to note that rigid time limits put unacceptable burden upon participants. The Commission's current proposal, requiring certain pre-filing procedures, would mitigate that burden to some degree. In several other aspects, the new proposal is an improvement upon the existing rules.

In these comments, NNA addresses its principal remaining concern about expedited reviews: the effect a shortened review period would have upon the time available for field hearings. NNA also offers comments on aspects of the proposal where it has specific concerns.

1. Field hearings are essential in many cases for a full understanding of impacts upon communities across America.

The principal characteristic of the Postal Service's most recent "nature of service" proceedings has been to truncate service in sparsely populated and rural areas in order to consolidate activities into urban areas where mail volume is greatest. While the Postal Service's desires to do so are predictable, given the inability of Congress to arrive at reform legislation to ease the Service's financial obligations, the increased urbanization of mail standards and products is a major concern to rural America.

The public discussion over the urbanization of the mail is far from over. For instance, the Senate Appropriations Committee last week approved a measure directing the Government Accountability Office to examine the degree to which the Postal Service's Network Optimization Plan has disadvantaged some states and requires the Postal Service to report on the degree to which it has complied with recommendations of the Commission in its network consolidation plans. Subcommittee on Financial Services and General Government, Senate Appropriations Committee, Senate Report, No. 113-080, July 25, 2013, found at http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp113&sid=cp113DGdGa&refer=&r_n=sr080.113&item=&&&seI=TOC_377389&.

Unless the Postal Service's financial plight is significantly relieved by mail volume growth or Congressional action, it is likely that the Commission will continue to be asked for advisory opinions in service cases that involve consolidations, service standards and other diminutions of service that require the public to adapt, alter distribution methods, change business plans or convert communications entirely to a more dependable digital environment. Thus, the procedure used by the Commission to gauge the degree of harm to the public as well as future mail volumes is critical to understanding the vector the Postal Service wishes to follow.

In most cases, the needs of the public for service will be insufficiently understood unless the Commission makes an aggressive effort to gather input from a public that may not track the Postal Service's day-to-day changes. That effort usually will be enhanced by field hearings.

There are numerous advantages to field hearings in service cases:

- the ability of witnesses without the means to fly into Washington, Dc, to drive to a closer city to testify or listen;
- a more approachable physical environment than a DC hearing room;
- a less-intimidating procedural atmosphere, where citizens (as opposed to Washington lawyers) dominate the discussion; and
- a recognition by the Commission that policy deliberations should not be confined to the nation's capital.

NNA publishers have taken advantage of field hearings. Its witnesses would not have been able to appear in a Washington, DC, environment because of time or resource limitations. NNA believes that the perspectives offered by its witnesses and others who have appeared in field hearings add materially to the Commission's understanding of the nation's reliance upon the mail. Among the proceedings where NNA members have appeared:

In the N2010-1 case on 5-day delivery:

Dallas, Texas at Dallas City Hall Phil Major, then publisher of the Wise County (TX) Messenger, Transcript of Dallas TX Field Hearing, May 17, 2010, at 13-17 and Roy Robinson, then publisher of the Graham (TX) Leader, Dallas Field Hearing at 17-21 (also appearing for Texas Press Association, both testifying on the need for Saturday delivery in rural Texas;

Chicago, Illinois Chris Huckle, publisher of the Cadillac (MI) News Transcript of Chicago, Illinois Field hearing, June 21, 2010, at 141-148, testifying on the uniquely damaging impact upon a 6-day mailed daily newspaper of the proposed 5-day mail schedule.

In the PI2008-3 inquiry into Universal Service:

Flagstaff, IL at Flagstaff City Hall Merle Baranczyk, publisher of the Mountain Mail, Salida, CO, Transcript of Flagstaff, AZ Field Hearing, May 21, 2008, at 24-30, discussing Flats Sequencing and alternative delivery possibilities driven by a decline of rural service.

In the RM2007-1 inquiry into the rate system mandated by the Postal Accountability and Enhancement Act (PAEA):

Kansas City, Missouri at Kansas City's City Hall David Berry, vice president, Community Publications, Inc., Bolivar, MO, Transcript of Kansas City Field Hearing, June 22, 2007, at 23-27, on the need for rate adjustments when service standards are not met.

In a world where all affected participants regularly monitored the Commission's proceedings online, read the Federal Register, retained Washington counsel and focused their primary activities upon the mail, as the Commission's usual litigants do, shorter proceedings would not inhibit the Commission's ability to hold field hearings. But it would be a mistake to assume that interested parties all have the luxury of following the Postal Service's plans so closely. When the Commission's travels to cities around the country, its activities stimulate local news coverage, draw attention of Congressional representatives and give the associations, community interest groups, postal employee groups, Postal Customer Councils, and Postal Service field executives the opportunity to notice that something may be happening that will affect them.

Such hearings require lead time for logistics and advance publication. They require travel time for a Commission that is increasingly pressed in its schedule. The same constraints affect participants' abilities to inform their own stakeholders, gather facts and figures and arrange schedules. Sufficient notice must be given potential participants to allow them to decide whether they will be affected and construct testimony on their own behalf.

The expectation of 90-day proceedings will militate against holding field hearings, as the Commission implies in its notice at page 10. A presumption of 90-day limits will put the burden on parties to argue for exceptions and challenge the Commission to either forego common sense fact-gathering or cheat its own deliberations. Neither constraint lends itself to sound public policy.

NNA submits that in N cases where a Postal Service plan is likely to affect citizens in all types of communities alike, an expedited process may be realistic. But where a disproportionate impact will be felt in the interior of the country, a presumption should be apply that field hearings will be necessary. To overcome the presumption, the Commission should require the Postal Service, at a minimum, to assert that the impact of its proposals would not disproportionately affect smaller or more rural communities, and permit a period of time for participants to dispute the Postal Service's assertion before the Commission publishes a procedural schedule. Where participants persuasively argue or the Commission's own analysis determines that citizens across the country should have the opportunity to be heard at hearings, the schedule should adopt a 120- to 180-day expectation. Of course, if proceedings can be concluded short of the anticipated time, the Commission should hasten to conclude them.

2. Other aspects of the proposed rule will diminish the Commission's deliberations.

NNA has for several years warned that participation in Commission proceedings by organizations representing small businesses and citizens is waning and that the

formalized and increasingly econometric content of its proceedings all but prohibits representation by many groups. The faster and more restrictive the Commission's schedule becomes, the greater will be the challenges for smaller parties to overcome if they wish to participate. The Commission's deliberations will be poorer for their absence.

Several changes in the current proposals will raise the bar for participation.

- Tightened deadlines—particularly where deadlines are shortened to only two calendar days, such as the limitation on motions to strike. The deadline here could toll over a long weekend.
- Limited discovery questions. The limitation on initial discovery is acceptable, but not on follow-up questions. The Postal Service is demonstrably capable of such opacity in responses that the limitation could run out long before clarity arrives. The rules should permit at least one set of follow up interrogatories without limitation by a discovery cap.
- The limitation on presenting alternatives to a proposal on rebuttal. The absence of feasible alternatives would leave the Commission in the position of accepting or rejecting a Postal Service proposal as a whole. On such a record, a rejection would be unlikely.

On the other hand, some proposals make fundamental sense and NNA supports them.

- Eliminating the limited participant status. This status was created in an environment when participants had to request physical service of documents in order to follow the progress of the case. The Commission's website and electronic service and its willingness to receive comments through its public file from those who do not choose to participate in discovery obviate the rationale for limited participation.
- Limited pages in initial and reply briefs. Such limitations are common in most court systems. Counsel can be terse and cogent when necessary.

- Mandatory technical conferences. These conferences have been helpful even to parties, like NNA, who do not usually retain economic counsel. Maintaining archived webcasts of the conferences would assist smaller parties who may not be able to attend.
- Pre-filing requirements. The Postal Service is correct that pre-filing briefings are helpful. Among other things, they enable counsel to air concerns with their clients before a proceeding begins and possibly dispose of those concerns, rather than feeling pressed to engage in discovery to preserve options to object in a time-pressured proceeding. NNA also suggests that a practice instituted by the Commission in the late cost-of-service cases before enactment of PAEA of requiring a policy witness or a “road-map” witness could productively be included in the pre-filing phase.

In conclusion, NNA supports the Commission’s goal of expediting its N service cases to aid the Postal Service in availing itself of an advisory opinion before it takes action. Advice that arrives before the object of its attentions have moved on is obviously worth pursuing. Many aspects of the proposed new rules improve the process. The creation of time limits that anchor the Commission entirely in Washington, DC, is not an improvement. Field hearings are an important part of service cases. They should be preserved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing document online in accordance with the Commission's Rules of Practice.

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